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NOTE: CHANGES MADE BY THE COURT

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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 **DECKERS OUTDOOR**
18 **CORPORATION, a Delaware**
19 **Corporation,**

20 **Plaintiff,**

21 **v.**

22 **STEVEN MADDEN, LTD., a**
23 **Delaware Corporation; DOLCE VITA**
24 **FOOTWEAR INC., a Washington**
25 **Corporation; J. HALE, INC. dba**
26 **Lori's Designer Shoes, an Illinois**
27 **Corporation; and DOES 1-10,**
28 **inclusive**

Defendant.

Case No. 2:22-cv-05722-DSF-JPR

**STIPULATED PROTECTIVE
ORDER**

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action may involve production of confidential, proprietary,
4 or private information for which special protection from public disclosure and from
5 use for any purpose other than prosecuting this litigation may be warranted.

6 Accordingly, the Parties hereby stipulate to and petition the Court to enter the
7 following Stipulated Protective Order. The Parties acknowledge that this Order
8 does not confer blanket protections on all disclosures or responses to discovery and
9 that the protection it affords from public disclosure and use extends only to the
10 limited information or items that are entitled to confidential treatment under the
11 applicable legal principles. The Parties further acknowledge, as set forth in Section
12 12.3 below, that this Order does not entitle them to file Confidential Information
13 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
14 and the standards that will be applied when a Party seeks permission from the Court
15 to file material under seal.

16 1.2 GOOD CAUSE STATEMENT FOR CONFIDENTIAL PROTECTIVE
17 ORDER

18 In its Complaint, Plaintiff asserts causes of action against Defendants for 1)
19 trade dress infringement and unfair competition under the Lanham Act; 2) patent
20 infringement; and 3) related claims under state statutory and common law.
21 Defendants deny all of Plaintiff's claims and all liability in this action. Defendants
22 contend that they have not committed any act of trade dress infringement, that there
23 is no valid and enforceable trade dress, that they have not committed unfair
24 competition or fraudulent business practices under any legal theory, that they do not
25 infringe any valid and enforceable claim of the asserted design patent, and that the
26 asserted claims are barred by equitable principles (acquiescence, waiver, consent,
27 estoppel), unclean hands, and lack of damages, among other defenses. Accordingly,
28

1 this action is likely to involve trade secrets, customer and pricing lists and other
2 valuable research, development, commercial, financial, technical and/or proprietary
3 information for which special protection from public disclosure and from use for
4 any purpose other than prosecution of this action is warranted. Such confidential and
5 proprietary materials and information may consist of, among other things,
6 confidential business or financial information, information regarding confidential
7 business practices, or other confidential research, development, or commercial
8 information (including information implicating privacy rights of third parties),
9 information otherwise generally unavailable to the public, or which may be
10 privileged or otherwise protected from disclosure under state or federal statutes,
11 court rules, case decisions, or common law. Accordingly, to expedite the flow of
12 information, to facilitate the prompt resolution of disputes over confidentiality of
13 discovery materials, to adequately protect information the parties are entitled to keep
14 confidential, to ensure that the parties are permitted reasonable necessary uses of
15 such material in preparation for and in the conduct of trial, to address their handling
16 at the end of the litigation, and serve the ends of justice, a protective order for such
17 information is justified in this matter. It is the intent of the parties that information
18 will not be designated as confidential for tactical reasons and that nothing be so
19 designated without a good faith belief that it has been maintained in a confidential,
20 non-public manner, and there is good cause why it should not be part of the public
21 record of this case.

22 1.3 GOOD CAUSE STATEMENT FOR HIGHLY CONFIDENTIAL -
23 ATTORNEYS' EYES ONLY PROTECTIVE ORDER

24 This action is likely to involve trade secrets, business and brand strategy, and
25 other valuable research, development, commercial, financial, technical and/or
26 proprietary information for which special protection from disclosure to business
27 competitors and from use for any purpose other than prosecution of this action is
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warranted and the risk of harm from disclosure is great. Such confidential and proprietary materials and information may consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information, information otherwise generally not disseminated within the parties' organizations and only to employees who require access to such information to perform their duties. The dissemination of this proprietary information could result in improper use by business competitors. Documents that contain sales data, revenue, advertising and marketing strategy, could result in improper use by business competitors seeking to replicate business practices and circumvent the time and resources necessary in developing their own practices and strategies materially affecting a party's ability to increase its competitive advantage. It is the intent of the parties that information will not be designated as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY for tactical reasons and that nothing be so designated without a good faith belief that the dissemination of this proprietary information could result in improper use by business competitors, and there is good cause why it should not be seen by an opposing Party to this Action and attorneys who are employees of a Party to this Action (in-house counsel).

2. DEFINITIONS

2.1 Action: this pending lawsuit *Deckers Outdoor Corporation v. Steven Madden, Ltd; et al.*, C.D. Cal. 2:22-cv-05722-DSF-JPR.

2.2 Challenging Party: a Party or Nonparty that challenges the designation of information or items under this Order.

2.3 "CONFIDENTIAL", or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for

1 protection under Federal Rule of Civil Procedure 26(c) and as specified above in the
2 Good Cause Statement.

3 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
4 their support staff).

5 2.5 Designating Party: a Party or Nonparty that designates information or
6 items that it produces in disclosures or in responses to discovery as
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES
8 ONLY”.

9 2.6 Disclosure or Discovery Material: all items or information, regardless
10 of the medium or manner in which it is generated, stored, or maintained (including,
11 among other things, testimony, transcripts, and tangible things), that are produced or
12 generated in disclosures or responses to discovery in this matter.

13 2.7 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as
15 an expert witness or as a consultant in this action.

16 2.8 House Counsel: attorneys who are employees of a Party to this Action.
17 House Counsel does not include Outside Counsel of Record or any other outside
18 counsel.

19 2.9 Nonparty: any natural person, partnership, corporation, association, or
20 other legal entity not named as a Party to this action.

21 2.10 Outside Counsel of Record: attorneys who are not employees of a
22 Party to this Action but are retained to represent or advise a Party and have appeared
23 in this Action on behalf of that Party or are affiliated with a law firm that has
24 appeared on behalf of that Party, including support staff.

25 2.11 Party: any Party to this Action, including all of its officers, directors,
26 employees, consultants, retained experts, and Outside Counsel of Record (and their
27 support staffs).
28

2.12 Producing Party: a Party or Nonparty that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (for example, photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY”.

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above) but also any information copied or extracted from Protected Material; all copies, excerpts, summaries, or compilations of Protected Material; and any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial will be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order will remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition is the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice, or (2) final judgment after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time under applicable law.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Each Party or Nonparty that designates information or items for
3 protection under this Order must take care to limit any such designation to specific
4 material that qualifies under the appropriate standards. The Designating Party must
5 designate for protection only those parts of material, documents, items, or oral or
6 written communications that qualify so that other portions of the material,
7 documents, items, or communications for which protection is not warranted are not
8 swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations
10 that are shown to be clearly unjustified or that have been made for an improper
11 purpose (for example, to unnecessarily encumber the case-development process or
12 to impose unnecessary expenses and burdens on other parties) may expose the
13 Designating Party to sanctions.

14 If it comes to a Designating Party's attention that information or items it
15 designated for protection do not qualify for that level of protection, that Designating
16 Party must promptly notify all other Parties that it is withdrawing the inapplicable
17 designation.

18 5.2 Except as otherwise provided in this Order, Disclosure or Discovery
19 Material that qualifies for protection under this Order must be clearly so designated
20 before the material is disclosed or produced.

21 Designation in conformity with this Order requires the following:

22 (a) for information in documentary form (for example, paper or electronic
23 documents but excluding transcripts of depositions or other pretrial or trial
24 proceedings), the Producing Party must affix at a minimum the legend
25 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES
26 ONLY" to each page that contains Protected Material. If only a portion or portions
27 of the material on a page qualify for protection, the Producing Party must clearly
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1 identify the protected portion(s) (for example, by making appropriate markings in
2 the margins).

3 A Party or Nonparty that makes original documents available for
4 inspection need not designate them for protection until after the inspecting Party has
5 indicated which documents it would like copied and produced. During the
6 inspection and before the designation, all material made available for inspection
7 must be treated as “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY”
8 After the inspecting Party has identified the documents it wants copied and
9 produced, the Producing Party must determine which documents, or portions
10 thereof, qualify for protection under this Order. Then, before producing the
11 specified documents, the Producing Party must affix the “CONFIDENTIAL” or
12 “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY” legend to each page
13 that contains Protected Material. If only a portion or portions of the material on a
14 page qualify for protection, the Producing Party also must clearly identify the
15 protected portion(s) (for example, by making appropriate markings in the margins).

16 (b) for testimony given in depositions, the Designating Party must identify
17 the Disclosure or Discovery Material that is protected on the record, before the close
18 of the deposition.

19 (c) for information produced in some form other than documentary and for
20 any other tangible items, the Producing Party must affix in a prominent place on the
21 exterior of the container or containers in which the information is stored the legend
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES
23 ONLY”. If only a portion or portions of the information warrant protection, the
24 Producing Party, to the extent practicable, must identify the protected portion(s).

25 5.3 If timely corrected, an inadvertent failure to designate qualified
26 information or items does not, standing alone, waive the Designating Party’s right to
27 secure protection under this Order for that material. On timely correction of a
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1 designation, the Receiving Party must make reasonable efforts to assure that the
2 material is treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Any Party or Nonparty may challenge a designation of confidentiality
5 at any time consistent with the Court's scheduling order.

6 6.2 The Challenging Party must initiate the dispute-resolution process (and,
7 if necessary, file a discovery motion) under Local Rule 37.

8 6.3 The burden of persuasion in any such proceeding is on the Designating
9 Party. Frivolous challenges, and those made for an improper purpose (for example,
10 to harass or impose unnecessary expenses and burdens on other parties), may expose
11 the Challenging Party to sanctions. Unless the Designating Party has waived or
12 withdrawn the confidentiality designation, all parties must continue to afford the
13 material in question the level of protection to which it is entitled under the
14 Producing Party's designation until the Court rules on the challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 A Receiving Party may use Protected Material that is disclosed or
17 produced by another Party or by a Nonparty in connection with this Action only for
18 prosecuting, defending, or attempting to settle this Action. Such Protected Material
19 may be disclosed only to the categories of people and under the conditions described
20 in this Order. When the Action has been terminated, a Receiving Party must comply
21 with the provisions of Section 13 below (FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a manner sufficiently secure to ensure that access is limited to the
24 people authorized under this Order.

25 7.2 Unless otherwise ordered by the Court or permitted in writing by the
26 Designating Party, a Receiving Party may disclose any information or item
27 designated "CONFIDENTIAL" only to the following people:
28

1 (a) the Receiving Party's Outside Counsel of Record in this Action, as
2 well as employees of that Outside Counsel of Record to whom it is reasonably
3 necessary to disclose the information for this Action;

4 (b) one designated officer, director, or employee (including House
5 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
6 Action;

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this Action and who have signed the
9 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and Professional
13 Vendors to whom disclosure is reasonably necessary for this Action and who have
14 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information;

17 (h) during their depositions, witnesses and attorneys for witnesses to
18 whom disclosure is reasonably necessary, unless otherwise agreed by the
19 Designating Party or ordered by the Court. Pages of transcribed deposition
20 testimony or exhibits to depositions that reveal Protected Material may be separately
21 bound by the court reporter and may not be disclosed to anyone except as permitted
22 under this Order; and

23 (i) any mediator or settlement officer, and their supporting personnel,
24 mutually agreed on by any of the Parties engaged in settlement discussions or
25 appointed by the Court.

26 7.3 Unless otherwise ordered by the court or permitted in writing by the
27 Designating Party, a Receiving Party may disclose any information or item
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1 designated “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
3 well as employees of said Outside Counsel of Record to whom it is reasonably
4 necessary to disclose the information for this Action;

5 (b) actual or potential independent experts or consultants (and their
6 administrative or clerical staff) engaged in connection with this litigation (which
7 shall not include the current employees, officers, members, or agents of parties or
8 affiliates of parties) who, prior to any disclosure of Protected Material to such
9 person, have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
10 A);

11 (c) the Court and its personnel;

12 (d) court reporters and their staff;

13 (e) professional jury or trial consultants, mock jurors, and Professional
14 Vendors to whom disclosure is reasonably necessary for this Action and who have
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses and attorneys for witnesses to whom
19 disclosure is reasonably necessary, unless otherwise agreed by the Designating Party
20 or ordered by the Court. Pages of transcribed deposition testimony or exhibits to
21 depositions that reveal Protected Material may be separately bound by the court
22 reporter and may not be disclosed to anyone except as permitted under this Order;
23 and

24 (i) any mediator or settlement officer, and their supporting personnel,
25 mutually agreed on by any of the Parties engaged in settlement discussions or
26 appointed by the Court.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY” that Party must

(a) promptly notify in writing the Designating Party. Such notification must include a copy of the subpoena or court order unless prohibited by law;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification must include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order should not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY” before a determination on the protective-order request by the relevant court unless the Party has obtained the Designating Party’s permission. The Designating Party bears the burden and expense of seeking protection of its Protected Material, and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Nonparty in this Action and designated as “CONFIDENTIAL” or “HIGHLY

CONFIDENTIAL- ATTORNEYS' EYES ONLY." Such information is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Nonparty from seeking additional protections.

(b) In the event that a Party is required by a valid discovery request to produce a Nonparty's Protected Material in its possession and the Party is subject to an agreement with the Nonparty not to produce the Nonparty's Protected Material, then the Party must

(1) promptly notify in writing the Requesting Party and the Nonparty that some or all of the information requested is subject to a confidentiality agreement with a Nonparty;

(2) promptly provide the Nonparty with a copy of this Order, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Nonparty, if requested.

(c) If the Nonparty fails to seek a protective order within 21 days of receiving the notice and accompanying information, the Receiving Party may produce the Nonparty's Protected Material responsive to the discovery request. If the Nonparty timely seeks a protective order, the Receiving Party must not produce any information in its possession or control that is subject to the confidentiality agreement with the Nonparty before a ruling on the protective-order request. Absent a court order to the contrary, the Nonparty must bear the burden and expense of seeking protection of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately notify the Designating Party in writing

1 of the unauthorized disclosures, use its best efforts to retrieve all unauthorized
2 copies of the Protected Material, inform the person or people to whom unauthorized
3 disclosures were made of the terms of this Order, and ask that person or people to
4 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto
5 as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
9 inadvertently produced material is subject to a claim of privilege or other protection,
10 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
11 Procedure 26(b)(5)(B).

12 12. MISCELLANEOUS

13 12.1 Nothing in this Order abridges the right of any person to seek its
14 modification by the Court.

15 12.2 By stipulating to the entry of this Order, no Party waives any right it
16 otherwise would have to object to disclosing or producing any information or item
17 on any ground not addressed in this Order. Similarly, no Party waives any right to
18 object on any ground to use in evidence of any of the material covered by this
19 Order.

20 12.3 A Party that seeks to file under seal any Protected Material must
21 comply with Civil Local Rule 79-5. Protected Material may be filed under seal only
22 pursuant to a court order authorizing the sealing of the specific Protected Material at
23 issue. If a Party's request to file Protected Material under seal is denied, then the
24 Receiving Party may file the information in the public record unless otherwise
25 instructed by the Court.

26 13. FINAL DISPOSITION
27
28

1 After the final disposition of this Action, as defined in paragraph 4, within 60
2 days of a written request by the Designating Party, each Receiving Party must return
3 all Protected Material to the Producing Party or destroy such material. As used in
4 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
5 summaries, and any other format reproducing or capturing any of the Protected
6 Material. Whether the Protected Material is returned or destroyed, the Receiving
7 Party must submit a written certification to the Producing Party (and, if not the same
8 person or entity, to the Designating Party) by the 60-day deadline that identifies (by
9 category, when appropriate) all the Protected Material that was returned or
10 destroyed and affirms that the Receiving Party has not retained any copies, abstracts,
11 compilations, summaries, or any other format reproducing or capturing any of the
12 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
13 archival copy of all pleadings; motion papers; trial, deposition, and hearing
14 transcripts; legal memoranda; correspondence; deposition and trial exhibits; expert
15 reports; attorney work product; and consultant and expert work product even if such
16 materials contain Protected Material. Any such archival copies that contain or
17 constitute Protected Material remain subject to this Order as set forth in Section 4
18 (DURATION).

14. SANCTIONS

Any willful violation of this Order may be punished by civil or criminal contempt, financial or evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the discretion of the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 01/24/2023

/s/ Jamie Fountain

Brent Blakely
Jamie Fountain
Attorneys for Plaintiff

DATED: 01/24/2023

/s/ Alexander J.L. Kaplan

Brian K. Brookey
Alexander J.L. Kaplan
Attorneys for Defendants

DATED: January 30, 2023



JEAN P. ROSENBLUTH
U.S. MAGISTRATE JUDGE

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[full name]**, of _____ **[full address]**, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the U.S. District Court for the Central District of California on [date] in the case of _____ **[insert case name and number]**. I agree to comply with and to be bound by all terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment, including contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ **[full name]** of _____ **[full address and telephone number]** as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____